IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 289 OF 2006

Shri Ismail D'Souza
alias Angelo Ismail
De Souza, major,
service, r/o Betim,
Bardez, Goa. ... Applicant

versus

1. Captain Lance Irwin
Lobo, major, businessman,
r/o Khobravaddo,
Calangute, Bardez, Goa.

2. State of Goa
through the Public Prosecutor,
Panaji, Goa. ... Respondents

Mr. S. G. Bhobe, Advocate for the Applicant.

Mr. Nigel Costa Frias, Advocate for the Respondent No.1.

Ms. W. Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 24TH AUGUST,2006.

ORAL ORDER

Heard the learned Counsel on behalf of both the parties. The applicant is the complainant in C.C.No.286/P/04/B.

In the said case, the learned J.M.F.C.,Mapusa by Order dated 5-7-2005 was pleased to issue process under Sections 409, 418, 423, 465, 468, 471 r/w 120-B I.P.C. The said Order came to be assailed by respondent no.1/A-1 before the Court of Sessions and the learned Additional Sessions Judge by Order dated 31-3-2006 was pleased to set aside the said Order partly in that only the Order issuing process against respondent no.1/A-1 under Section 409 was confirmed. Both the parties applied for certified copies of the said Order of the learned Additional Sessions Judge on the same day and the applicant obtained a copy of the same on 1-4-2006.

2. The respondent no.1/A-1 has again assailed the said Order of the learned Additional Sessions Judge before this Court in a petition filed under Section 482 of the Code of Criminal Procedure, 1973, notice of which came to be issued to the applicant, as respondent no.1, in the said petition on 23-7-2006 whereupon the applicant is stated to have contacted his Advocate on 26-7-2006, just prior to the hearing and therefore the said Advocate sought a week's time in the said petition (Criminal Miscellaneous Application(Main) No.253/2006) and

thereafter, after going through the papers the Advocate of the applicant advised him that the Order of the learned Additional Sessions Judge required to be challenged at his instance also and therefore the applicant applied for certified copy of the same on 1-8-2006 and obtained the same on 2-8-2006.

3. The present application for condonation of delay of 37 days has been filed by the applicant on 8-8-2006 in order to condone the delay in filing the revision application to challenge the said Order of the learned Additional Sessions Judge. As per the applicant, after the said criminal revision application was decided by the learned Additional Sessions Judge, the applicant being a layman did not have any knowledge that there was any need to challenge the said Order more so as the complaint filed by him was not dismissed and that the applicant also did not receive any legal advice at that stage that the Order was required to be challenged as there were findings given against the applicant and as such the applicant did not have knowledge that it was necessary to challenge the said Order.

4. The respondent no.1/A-1 has contested what has been

stated on behalf of the applicant, and, has stated that the application for condonation has been filed with mala fide intention. Respondent No.1/A-1 has stated that the applicant was represented before the Additional Sessions Judge at Panaji by a lawyer and was present on 31-3-2006 when the Judgment was pronounced and on the very same day had applied for urgent certified copy passed by the learned Additional Sessions Judge which was delivered to the applicant on 1-4-2006. The respondent no.1 has stated that the applicant had knowledge of the impugned Judgment and the contents thereof from 1-4-2006 and ought to have filed a revision against the same, if at all he was aggrieved, within the period provided under the law of limitation. It is stated by respondent no.1 that the applicant is an Accounts Officer working in the Directorate of Accounts, Government of Goa, at Panaji and was represented by a lawyer and therefore ought to have knowledge regarding the contents of the impugned Judgment and findings recorded therein and even otherwise the applicant ought to have obtained appropriate legal advice from his Advocate who had represented him in the said proceedings and not having done so the applicant is not justified in seeking condonation of delay in filing the revision before this

Court. The respondent no.1 has also stated that there is no explanation as to why the revision petition could not be filed earlier and the only reason mentioned by the applicant is that the applicant was under the belief that he did not require to challenge the impugned Judgment and that he realised that it required to be challenged only on 27-6-2006 when he was advised by his Advocate and that the applicant has not shown any bona fides nor any reasonable grounds necessitating for this Court to exercise its discretionary powers and condone the delay in filing the revision petition. The respondent no.1 has also stated that the applicant is a proxy of two disgruntled elements namely, Mr. Abhijit Almeida and his wife Leila Almeida, who have purchased a bungalow from him and who have a personal vendetta against him and for their own vested reasons have been filing various complaints against him before various Courts and authorities, etc.

5. Admittedly, the applicant had received a copy of the Order of the learned Additional Sessions Judge sought to be challenged in the revision application on 1-4-2006 and also had the benefit of legal advice at that time. The only reason assigned

by the applicant is that after he received the notice of the petition filed by him being Criminal Miscellaneous Application No.253/2006 that the lawyer whom he had approached told him that the impugned Order of the learned Additional Sessions Judge was required to be challenged and it does appear that the applicant as well as the lawyer appearing for him till then were satisfied that the Order of the learned Additional Sessions Judge did not require to be challenged. Whether the said Order of the learned Additional Sessions Judge could be interfered with whilst deciding Criminal Miscellaneous Application No.253/2006 by this Court on its own quite is another matter and that has got nothing to do with the filing of the revision petition and the application for condonation of delay. No doubt Courts adopt a liberal approach whilst condoning delay and that it is the acceptability of the reason assigned which is the criterion and not the length of delay. Sufficient cause is always interpreted liberally but does not mean that the Court should readily accept whatever a party alleges to explain his default. From the facts stated on behalf of respondent no.1 and reproduced hereinabove, it appears that the applicant has now sought to file a revision only by way of counter blast to the petition filed by

respondent no.1 i.e. Criminal Miscellaneous Application No.253/2006 since otherwise it is seen that till the applicant was notified of the said petition, the applicant was quite satisfied with the Order of the learned Additional Sessions Judge and had not proposed to challenge the same inspite of having had legal advice. In case the applicant wanted to challenge the said Order, the applicant would have certainly been more diligent and active which the applicant has not been. Consequently, it must be held that the applicant has failed to explain the delay of 37 days in filing the revision application. The application therefore is hereby dismissed.

N. A. BRITTO, J.

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